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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/223,347	12/30/98	BIERRE	<i>Holla</i>

P P-4286

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IM62/0605

EXAMINER

CROSS, L	
ART UNIT	PAPER NUMBER

1743

12

DATE MAILED:

06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/223,347

Applicant(s)

BIERRE ET AL.

Examiner

LaToya I. Cross

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 13, 2001 has been entered. Claims 1, 3, 4 and 32 are pending in the application.

Rejections Withdrawn from Previous Office Action

The rejection of claims 1, 3, 4 and 32 over Hulon '153 and Kavanaugh '786 under 35 USC 103 is withdrawn in view of Kavanaugh '786 teaching of etching glass surfaces, not plastic surfaces.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 3, 4, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,842,153 to Hulon (hereinafter to as Hulon '153) in view of U.S. Patent 5,609,778 to Pulaski et al (hereinafter Pulaski et al '778).

Hulon '153 discloses a container for holding biological samples. The container comprises a first tubular section having a closed end, and a second tubular section

which is integrally connected to the first tubular section (abstract). The outer tubular section has identification information integrally imprinted on the exterior surface to help in identifying the contents and other essential information concerning the sample (col. 3, lines 15-17; col. 4, line 66 - col. 5, line 5). The sample container of Hulon '153 is manufactured from strong plastic material (col. 7, lines 26-40).

Hulon '153 differ from the instantly claimed invention in that while Hulon '153 does disclose identifying information imprinted on the outer surface of the container, there is no disclosure of differing specular reflectances on the outer wall of the container due to the presence of the identifying information.

Pulaski et al '778 teach a process for high contrast marking on surfaces using lasers, whereby micro-reflectors are formed on the surfaces being marked. The surface markings may be applied to glass or plastic surfaces of containers. Pulaski et al '778 disclose prior art markings which were inferior since they could be removed during shipping or handling processes. The reference teaches the advantages of using laser markings which would prevent removal of the marks and allow for containers to be marked with specialized information. See col. 1, lines 49-57 and col. 2, lines 51-53. At col. 3, lines 51-55, Pulaski et al '778 teach the use of laser beams for directly marking or engraving the surface.

It would have been obvious to one of ordinary skill in the art to use the concepts of laser etching and specular reflectance on the container provided by Hulon '153 since the identification process of Pulaski et al '778 would provide a more accurate manner

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for labeling biological samples and a manner in which the labeling may not be tampered with. Use of such as process would allow for easy identification of the containers.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious within the meaning of 35 U.S.C. 103 in view of the teachings of Hulon '153 and Pulaski et al '778.

Response to Arguments

2. Applicant's arguments filed March 13, 2001 have been fully considered but they are not persuasive. While the rejection over Hulon '153 in view of Kavanaugh '786 has been withdrawn, Applicants' concerns regarding the rejection will be addressed. Applicants have argued that the references (Hulon '153 and Kavanaugh '786) fail to teach a "unique identifier" used to identify a particular patient in a database whereby each patient is associated with a unique identifier. Hulon '153 teaches integrally imprinting identifying information on the sample containers. Also, Kavanaugh '786, like Pulaski et al '778, teach the use of laser etching and engraving to mark surfaces with identifying information. It would be obvious to the skilled artisan to include any kind of information which would be helpful in identifying the container, whether it be patient information, batch codes, dates, etc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is (703) 305-


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7360. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703) 308-4073. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LIC *SLC*
May 31, 2001


Jill Warden
Supervisory Patent Examiner
Technology Center 1700